

**ACS INDUSTRIES, INC. AND AFFILIATES\***  
**TERMS AND CONDITIONS OF PURCHASE**

(Rev. 11-05)

**1. CONFLICT OF TERMS.** The terms and conditions of Buyer stated on this order shall govern in the event of any conflict with any terms proposed by Seller and are not subject to change by reason of any written or oral statements by Seller or by any terms stated in Seller's acknowledgment of this order, unless such conflicting or additional terms are accepted in a writing making reference to this order and signed by Buyer. Shipment of goods pursuant to this order shall be deemed to be an unqualified acceptance of the terms and conditions contained herein.

**2. CHANGES.** Buyer reserves the right to make changes at any time in (a) services to be performed or goods to be furnished, (b) drawings, designs, or specifications applicable to said services or goods, (c) methods of shipment and packing, and (d) time and place of delivery including temporary suspensions of shipments. If any such change causes an increase or decrease in the cost of or the time required for performance of this contract, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claim by Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from notification of the change by Buyer. Price increases or extensions of the time for delivery shall not be binding on Buyer unless evidenced by a purchase order change notice issued by Buyer.

**3. DELIVERY.** Time is of the essence in this contract, and if delivery of items or rendering of services is not completed by the time indicated, Buyer reserves the right, without liability and in addition to its other rights and remedies, to terminate this contract by notice effective upon receipt by Seller as to stated items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with any loss, expenses, or incidental or consequential damages incurred or suffered. Any provisions herein for delivery of goods or the rendering of services by installments shall not be construed as making the obligations of Seller severable. Shipments sent C.O.D. without Buyer's written consent will not be accepted and will be at Seller's risk regardless of F.O.B. point. Transportation charges on goods sold delivered destination must be prepaid. No insurance charges which increase shipping costs will be allowed unless authorized by Buyer. Regardless of F.O.B. point, Seller will handle all claims regarding loss or damage of goods in transit and billing and payment for such goods will be suspended until claim is resolved. Goods must be shipped as instructed and failure to do so will permit Buyer to bill all extra handling charges back to Seller.

**4. INSPECTION.** Goods purchased hereunder are subject to inspection and approval at the place designated by Buyer or at Buyer's destination. For a period of one year from delivery or until such time as the goods purchased hereunder are used by Buyer, whichever is longer, Buyer reserves the right to reject, refuse or revoke acceptance and return goods which are not in accordance with the instructions, specifications, drawings, or data relating to this order, or not in accordance with Seller's warranty as described in Paragraph 8 below. Buyer will charge Seller for the cost of inspecting any goods rejected. Goods not accepted will be returned to Seller at Seller's expense. Buyer reserves the right to place in Seller's plant, at Buyer's expense, inspectors who will be permitted to inspect any goods on this order before shipment or during the process of manufacture.

**5. PAYMENT.** Regardless of shipment or payment terms, payment for any goods shall not be deemed an acceptance thereof if payment by installments is permitted under this order. Seller waives any right to accelerate any amount due by reason of a failure by Buyer to pay one or more installments.

**6. MANUFACTURE IN ADVANCE.** Seller shall not manufacture in advance of Seller's normal flow time or deliver any goods in advance of the schedule specified in this order without Buyer's written permission. Buyer reserves the right to return at Seller's expense all goods received at Buyer's plant in advance of the schedule specified in this order. Goods shipped in excess of quantity designated in this order or tolerance from quantity previously agreed to in writing may be returned at Seller's expense.

**7. CONTAINER REFUNDS.** Seller shall refund to Buyer the amount charged for spools, reels, barrels, drums, containers, packaging, or handling devices upon return to Seller.

**8. WARRANTY.** By accepting this order Seller warrants that the goods, (a) are free from defects in materials, workmanship and fabrication, (b) conform to the quality, quantity, dimensions, and designs specified, (c) are strictly in accordance with Buyer's specifications, drawings and approved sample, if any, and (d) are merchantable and fit for the particular purpose for which they are purchased. This warranty is nonexclusive, shall survive acceptance and payment, and shall run to Buyer and its successors, assigns, customers and users of the goods or products containing the goods. This warranty is in addition to any other warranties granted or allowed by law or given by Seller to Buyer. Seller authorizes Buyer to extend Seller's warranties to Buyer's customers and the users of its goods or products containing the goods on the same terms as Buyer's warranty in effect at time of shipment to said customers or users. In the event that any good sold hereunder shall be defective in any respect, Seller shall be entitled to any and all remedies provided by law.

**9. INTELLECTUAL PROPERTY.** Seller warrants freedom from patent infringement and from interference with any third party intellectual property right and shall indemnify Buyer against any costs (including reasonable attorney's fees), liabilities, or judgments arising from any claim of patent infringement or alleged violation of any third party intellectual property right when Seller's goods are used for their normal purposes in the form sold by Seller.

**10. NON-DISCLOSURE AND BUYER'S PROPERTY.** All drawings, specifications, artwork, patterns, information or data furnished by Buyer or developed by Seller in connection with this order shall be Buyer's exclusive property, shall be used by Seller only for Buyer's work, shall be kept confidential, and shall be returned promptly at Buyer's request. If any work relating to this order is assigned to subcontractors, Seller shall require a similar written agreement from any subcontractors. Unless otherwise agreed in writing, all tools, patterns, equipment or materials of every description furnished to Seller by Buyer or paid for by Buyer, any replacements thereof, and any material affixed or attached thereto shall be the personal property of Buyer. Such property shall be plainly marked or otherwise adequately identified by Seller as Buyer's property, and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for Buyer's property and shall not use such property except in filling Buyer's orders.

**11. PRICE.** The price for the goods sold hereunder shall not be higher than that appearing on the face of this order, or if no price appears thereon, then no higher than the last price quoted by Seller. Seller covenants that if it should at any time prior to the delivery of the last goods covered hereby sell like articles in similar quantities to any third party at lower prices, it will notify Buyer in writing of such lower prices and Buyer will receive the full benefit of such lower prices from the date of such sale to any such third party.

**12. EXCUSABLE FAILURE OR DELAY.** Neither Buyer nor Seller shall be held responsible for the failure or delay in delivery or acceptance of goods sold hereunder where such failure or delays are due to any act of God or of the public enemy, war, compliance with laws, governmental acts or regulations, fire, flood, quarantine, embargo, epidemic, unusually severe weather or other causes similar to the foregoing beyond their reasonable control, but the party seeking to avail itself of any of the foregoing excuses shall promptly notify the other party of the reasons for any failure or delay in delivery or acceptance and shall exert its best efforts in avoiding further delay.

**13. COMPLIANCE WITH LAWS.** By accepting this order, Seller represents and warrants that it has complied and will continue to comply with all applicable federal, state and local laws and regulations in the production of goods or performance of services under. If Buyer shall be

held liable for any failure by Seller to comply with said laws and regulations, shall suffer any loss, including incidental and consequential damages, as a result of noncompliance, the allegation thereof, or administrative or judicial action based thereon, or shall incur any expense including, but not limited to, counsel fees in relation to said noncompliance or the allegation thereof, Seller shall indemnify and hold harmless Buyer to the full extent of such liability, loss or expense. Without limiting the generality of the foregoing, Seller warrants and agrees as follows: (a) all shipments of goods will be accompanied by Seller's certification as follows: "We hereby certify that these goods were produced in compliance with all applicable requirements of sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under section 14 thereof," (b) the goods delivered to Buyer under this order comply with the provisions of the Federal Occupational Safety and Health Act of 1970, as amended, and with safety standards as are in effect on the date of shipment to Buyer. Seller will honor any reasonable request by Buyer for information necessary to determine whether the goods comply with said provisions and standards, and in addition to other remedies of Buyer, will replace at its expense upon Buyer's request all goods found by Buyer or by official authority not to comply.

**14. GOVERNMENTAL REGULATIONS.** Seller agrees to comply with all applicable contract clauses required by federal, state or local law, rule, or regulation which shall be part of this contract including, but not limited to, the following, which are incorporated by reference herein: Equal Opportunity Clause; Affirmative Action Clause of Disabled Veterans and Veterans of the Vietnam Era; Affirmative Action Clause for Handicapped Workers; and the Certification of Nonsegregated Facilities Clause. Seller also agrees and certifies, if applicable, that it has developed a written affirmative action compliance program and annually files Standard Form 100 (EEO-1). In addition, Seller agrees to comply with all applicable federal laws and regulations regarding the utilization of small business concerns and/or small disadvantaged business concerns, including if applicable, any subcontracting plans thereunder.

**15. CANCELLATION.** In addition to any other rights that Buyer may have, Buyer reserves the right to cancel this order or any part of it and Buyer's sole responsibility to Seller shall be to pay the contract price for such goods as have been delivered as of the time such cancellation is effective and to reimburse to Seller its actual costs of materials and direct labor expended by it in reasonable anticipation of its fulfillment of this order which are not recoverable by Seller, provided that no allowance shall be made to Seller for any overhead or anticipated profit for undeliverable goods and materials.

**16. RESALE CERTIFICATION.** If this order is marked "Resale," the property purchased hereunder is purchased for resale. The failure by Buyer to so mark this order, however, shall not affect Seller's liability under any provision hereof to those purchasing from Buyer.

**17. SETOFF.** Buyer shall have the right at any time to setoff any amount owed by Seller to Buyer against any amount due and owed to Seller on this or any other order or obligation.

**18. ASSIGNMENTS AND SUBCONTRACTS.** Seller will not assign or transfer this order nor subcontract the furnishing of any completed or substantially completed article without the prior written approval of Buyer.

**19. TAXES.** Except as otherwise provided herein and unless prohibited by law, Seller agrees to pay any federal, state or local sales, use, transportation or excise tax which may be imposed upon the goods ordered or upon their sale, use or delivery.

**20. INDEMNITY.** Seller shall indemnify and hold harmless Buyer from and against any and all costs, including counsel fees, loss, and damages of any nature relating to the performance by Seller hereunder and including, without limitation, claims made for property damage or personal injury, including death, whether said claims are premised on contract or on tort including, without limitation, strict liability. This indemnity will not apply where such damage or injury is attributable solely to the actions of Buyer or its customers, agents or employees.

**21. INSURANCE.** Seller shall maintain insurance coverage in amounts not less than the following: (a) Worker's Compensation – Statutory Limits for the state or states in which this order is to be performed (or evidence of authority to self-insure); (b) Employer's Liability - \$250,000; (c) Commercial General Liability (including Products/Completed Operations and Blanket Contractual Liability) - \$1,000,000 per person, \$1,000,000 aggregate, and (d) Automobile Liability (including owned, non-owned and hired vehicles) - \$1,000,000 per occurrence. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under this order. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by this order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.

**22. CERTIFICATES OF INSURANCE.** At Buyer's request, Seller shall furnish to Buyer, within fifteen (15) days from the date of request, certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller and, if further requested by Buyer, such certificates will provide that Buyer shall receive fifteen (15) days prior written notification from the insurer of any termination or reduction in the amount or scope of coverages.

**23. DUTY DRAWBACK.** Should Buyer be entitled to make application for duty drawback with respect to any goods imported by Seller to satisfy this order, Seller will provide within 30 days of Buyer's request, without cost to Buyer, the necessary information and documentation to enable Buyer to make such application.

**24. PACKING AND CRATING.** All items shall be packed by Seller in suitable containers for protection in shipment and storage, and all such containers shall bear Buyer's name and this order number. Detailed packing slips are required. Prices set forth in this order include all charges for Seller's packing and crating and for transportation to F.O.B. point.

**25. SERVICES.** Where Seller supplies services to Buyer under this order, all of the terms and conditions herein shall apply. All new technology (including but not limited to inventions, patentable or not), new equipment or new manufacturing processes resulting from services performed by Seller for Buyer under this order shall be the exclusive property of Buyer.

**26. YEAR 2000 & BEYOND WARRANTY.** Seller represents and warrants that no products or services sold or provided to Buyer pursuant to this order, nor the information systems used by Seller to process or provide any sales, orders, goods or services will malfunction or fail to function, in any respects, and all such systems will operate accurately during, prior to, on, or after January 1, 2000, or when information containing a date (century, year, month, and/or day) is input or required, in any manner whatsoever. For purposes of this paragraph, a failure to 'operate accurately' shall be deemed to have occurred if accuracy or validity of any one or more of the following properties or capabilities is lacking: (a) execution of calculations using dates with a four digit year; (b) functionality (including both online and batch) including, but not limited to, entry, inquiry, maintenance, and update to support four-digit year processing; (c) interfaces and reports that support four-digit year processing; (d) successful transition, without human intervention, into the year 2000 using the correct system date; (e) after transition to the year 2,000, continued processing using a four-digit year without human intervention; (f) correct calculation of leap years; and (g) provision of correct results in forward and backward data calculation spanning century boundaries, including, without limitation, the conversation of previous years currently stored as two digits.

**27. MODIFICATION OF AGREEMENT.** No change or modification to this contract shall be effective against Buyer or Seller unless it is made in writing, makes specific reference to this contract and is signed by both parties.

**28. GOVERNING LAW.** This order and any matter relating thereto shall be governed by the laws of the State of Rhode Island without regard to its conflict of laws principles.